IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CONTEMPT PETITION NO.334 OF 2002.

M/s Shrikrishna Prasad CHS Ltd.... Petitioner.
V/s.
The Kulgaon Badlapur Municipal
Council & ors. ... Respondents.

Ms. Pritan Tendulkar for M/S. Karnik for the petitioner.

Shri Dinesh Adsule for the respondents.

CORAM : A.M. KHANWILKAR, J.

DATED : 8.8.2006.

P.C. :

. Heard Counsel for the parties.

Perused relevant documents on record.

2. This petition has been filed for initiating contempt action against the respondents for wilful disobedience of the direction given by this Court in terms oF order dated 21.2.2002 in writ petition No.4887/2001. The said order records assurance given by the respondent No 1 and 2-contemners that the unauthorised structure raised by respondent respondent No.4 will be demolished within two weeks from the date of order unless respondent No.4 obtains some restraint or injunction order and produces the same before respondent No.4 within the said time.

3. It is the case of the respondents-contemners that structures in question were demolished on 9th March 2002 and compliance report was submitted to respondent No. 2 -the Chief Officer by the concerned officer. On the other hand, grievance of the petitioner is that demolition is only on record as suit structures were only partly demolished. It is asserted that all the unauthorisd structures which were subject matter of order passed by the Division Bench of this Court dated 21.2.2002 were not demolished. This grievance was placed on record by way of legal notice dated 19.6.2002. As no remedial steps were taken by the Chief Officer, the petitioner instituted the present petition on 28th August 2002. Show cause notices were issued to the respondents, particularly, respondent Nos. 2 and 3, who are officers of respondent No.1- Municipal Council. The contemners filed reply before this Court on 4th May 2006, stating on oath that all the unauthorised construction was demolished. The petitioner filed rejoinder to the said affidavit controverting the position stated on affidavit by the contemners, and highlighting the fact that remaining unauthorised structure was still in existence. Accordingly, this Court, passed order on 7th July 2006 as follows:

"1. . Heard Counsel for the parties.

2. . Indeed, from the documents which are

filed on record at the instance of respondents /contemners it appears that steps were taken to demolish unauthorised structure in March, 2002 itself. The stand taken by the respondents is however, controverted by the petitioner in the petition, particularly in paragraph 5, description of the unauthorised structure is given. The case of the petitioner is that the entire unauthorised structure has not been removed.

3. To answer this controversy, it will be necessary for the respondents to produce the sanctioned plan with regard to the suit structure and also sketch prepared by the architect of the Council giving description of the structure as it exists on site and identify the portion, which is unauthorised in the context of the sanctioned plan. This exercise be undertaken before the next date of hearing.

4. It is however, made clear that if any portion of the unauthorised structure has remained to be removed, the authorities may take steps, as may be warranted to remove that structure in terms of assurance given before the Division Bench on February 21,2002 before the next date of hearing and report compliance, failing which the Court may consider initiating action for aggravated contempt.

5. The respondent Nos. 2 and 3 shall remain personally present in the Court on the next date of hearing. The architect of the respondent council shall also remain present in the Court at the hearing of the petition so that his assistance for explaining description of the property can be taken, if required.

6. Stand over to 24th July 2006."

4. Indeed, pursuant to the aforesaid order, respondent Nos. 2 and 3 proceeded to demolish the remaining unauthorised structures on 11th July 2006 and placed the fact on record vide affidavit dated 20th July 2006. When this matter was called out on 24th July 2006, the submission of the petitioner

that respondents-contemners has filed incorrect and misleading affidavit on oath on 4th May 2006, was prima facie found to be of substance. Accordingly, this Court on 24th July 2006 passed the following order.

"1. Heard Counsel for the parties.

2. Counsel appearing for the respondent Nos. 1 and 2 informs that now action has been taken in respect of the unauthorised structures. Those structures have been demolished.

Prima facie, I find substance in the stand taken by the Counsel for the petitioner that this itself indicates that the respondents/contemners have not only disobeyed the orders of the Court, but had the audacity to mislead this Court by filing affidavit of Prakah Narsingrao Borse, Chief Officer dated 4th May 2006, taking specific stand in paragraph-5 of the said affidavit that unauthorised construction as well as tin shed have already been demolished.

3. The respondents/contemners will have to offer explanation as to on what basis such statement of fact is made in paragraph-5 of the affidavit filed by Prakash K. Borse, Chief Officer of the Municipal Council. That affidavit be filed within one week from today. Chief Officer of the Municipal Council shall remain personally present in the Court along with the relevant original record for hearing of this matter, to enable the Court to pass further order, as may be advised.

4. Further affidavit by respondent Nos. 1 and 2 be filed on or before 28th July, 2006. Rejoinder thereof, if any, to be filed on or before 4th August 2006. Parties to exchange pleadings well in advance, to be filed in registry within specified time.

5. This petition be listed on 8th August 2006."

As per the liberty granted to the contemners to file

further affidavit explaining the circumstances in which incorrect statement was made in the affidavit dated 4th May 2006, the Chief Officer has filed further affidavit on 28th July 2006. In the said affidavit, not even remote explanation is offered as to in what circumstances such incorrect statement of fact was placed on record in the affidavit dated 4th May 2006. Argument of the petitioner is that, incorrect statement of fact was made in the affidavit dated 4th May 2006 with a view to mislead this Court and to absolve the contemners from the action of wilful disobedience of the directions given by the Court. Counsel for respondent was called upon to point out specific statement made in the latest affidavit to explain the circumstances in which the respondent No.2 did not mention correct position in the earlier affidavit on 4th May 2006, and instead asserted that the unauthorised structures have been demolished. He was unable to point out any explanation.

5. It necessarily follows that the earlier affidavit filed on 4th May 2006 was filed in casual manner, without ascertaining the fact situation. If respondent No.2 had taken proper care of ascertaining the position stated in the legal notice ‘ as well as in this petition, perhaps explanation now offered that the tin shed which was earlier removed in March 2002 was re-erected in June 2003

could have been placed on record. The affidavit now filed on oath furnishes explanation with regard to tin shed that it was erected pursuant to the revised permission granted on 9.6.2003. However, it is conceded that permission was only for four months and was not extended thereafter. Notwithstanding this position, no steps were taken by the officers of the respondents to remove the said unauthorised structure; that too inspite of institution of contempt action and the Court having issued show cause notice to the concerned officials. Respondent No.2 who is present before the Court offers unconditional apology for making incorrect /incomplete statements in the above affidavit filed before this Court. Ordinarily, this Court would have taken the matter to its logical end, as the unconditional apology tendered across the bar is not supported by any explanation whatsoever. However, I am disposed of to take liberal view,having regard to the fact that now all the unauthroised structures have been demolished and respondents have undertaken to ensure that they shall not permit any unauthorised structure to remain on the suit site, which undertaking is accepted. Instead of precipitating the matter, the petition is disposed of with direction to the respondents that the respondents, in particular the Chief Officer shall be personally responsible if any unauthorised structure is allowed to be put up on the suit site,

in view of the undertaking given to this Court.

6. Petition is disposed of in terms of this order with no order as to costs.

7. Copy of this order be forwarded to the Collector of Thane for taking appropriate action, as may be advised.

(A.M. KHANWILKAR,J.)